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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO CESAR QUINTANILLA,

Defendant and Appellant.

F076951

(Super. Ct. No. F16903103)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Don Penner, Judge.

Kendall Dawson Wasley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Jeffrey A. White, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Poochigian, Acting P.J., Detjen, J. and Peña, J.

## **BACKGROUND**

On May 16, 2016, police officers encountered defendant Mario Cesar Quintanilla drinking beer in a parking lot. Defendant immediately withdrew a kitchen knife from his pocket and challenged the officers to fight. When verbal attempts to placate defendant failed, the officers used a bean bag gun to subdue him. Defendant resisted arrest and remained combative while in custody.<sup>1</sup>

On May 18, 2016, the district attorney filed a criminal complaint alleging defendant resisted an officer (Pen. Code,<sup>2</sup> § 69 [count 1]); carried a concealed dirk or dagger (§ 21310 [count 2]); and brandished a deadly weapon other than a firearm (§ 417, subd. (a)(1) [count 3]). The complaint further alleged defendant sustained two prior felony convictions, each of which qualified as a strike offense (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). Defense counsel declared a doubt as to defendant's mental competence and criminal proceedings were suspended. On July 14, 2016, the trial court determined defendant was incompetent to stand trial. Defendant was committed to a state hospital for treatment.

On February 16, 2017, the court reinstated criminal proceedings after finding defendant competent to stand trial. Defendant pled nolo contendere to count 1. The prosecution's motion to dismiss counts 2 and 3 was granted. Defendant was sentenced to state prison for four years.

On appeal, defendant argues for retroactive application of section 1001.36, which authorizes pretrial diversion in certain cases involving mentally disordered offenders. He cites as supporting authority *People v. Frahs* (2018) 27 Cal.App.5th 784, review granted

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<sup>1</sup> Defendant stipulated the police reports contained the factual basis for his plea. The probation report obtained its facts from the police report. The facts here are taken from the probation officer's report.

<sup>2</sup> Subsequent statutory citations refer to the Penal Code.

December 27, 2018, S252220. For the reasons set forth below, we reject defendant’s claim and affirm the judgment.

### **DISCUSSION**

“Section 1001.36 created a diversion program for defendants who suffer from medically recognized mental disorders, ‘including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder . . . .’ ” (*People v. Craine* (2019) 35 Cal.App.5th 744, 750, review granted September 11, 2019, S256671 (*Craine*), quoting § 1001.36, subd. (b)(1)(A).) “Enacted as part of Assembly Bill No. 1810 (2017-2018 Reg. Sess.) . . . , which was a budget trailer bill, the law took effect on June 27, 2018. [Citation.] Three months later, the statute was amended to prohibit its use in cases involving murder, voluntary manslaughter, rape and other sex crimes, the use of a weapon of mass destruction, and any offense ‘for which a person, if convicted, would be required to register pursuant to [s]ection 290, except for a violation of [s]ection 314[, i.e., indecent exposure].’ [Citations.]” (*Craine, supra*, at p. 750, rev.gr.) “Subject to numerous caveats and restrictions, trial courts may now ‘grant pretrial diversion’ when a mentally disordered individual is charged with a misdemeanor or felony offense (other than those previously mentioned).” (*Id.* at p. 751, quoting § 1001.36, subd. (a).) Pretrial diversion “means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to [additional restrictions.]” (§ 1001.36, subd. (c).)

“ ‘The Legislature ordinarily makes laws that will apply to events that will occur in the future. Accordingly, there is a presumption that laws apply prospectively rather than retroactively. But this presumption against retroactivity is a canon of statutory interpretation rather than a constitutional mandate. [Citation.] Therefore, the Legislature can ordinarily enact laws that apply retroactively, either explicitly or by implication. [Citation.] In order to determine if a law is meant to apply retroactively, the role of a

court is to determine the intent of the Legislature . . . . [Citation.]’ [Citation.]” (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 307.) “ ‘[I]n the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible . . . .’ [Citations.]” (*Id.* at p. 308, fn. omitted.)

In *Craine*, our court recognized section 1001.36 “confers a potentially ameliorative benefit to a specified class of persons. The question, however, is whether the class includes defendants who have already been found guilty of the crimes for which they were charged.” (*Craine, supra*, 35 Cal.App.5th at p. 754, rev.gr.) We focused on “how the Legislature chose to define the benefit itself, i.e., pretrial diversion.” (*Ibid.*) We held:

“As discussed ‘ “pretrial diversion” means the *postponement of prosecution*, either temporarily or permanently, at any point in the judicial process *from the point at which the accused is charged until adjudication* . . . .’ [Citation.] We agree . . . that ‘adjudication,’ which is an undefined term, is shorthand for the adjudication of guilt or acquittal. [Citations.] At most, ‘adjudication’ could be synonymous with the rendition or pronouncement of judgment, which occurs at the time of sentencing. [Citations.] Beyond that point, the trial court ordinarily ceases to have jurisdiction over the matter. [Citations.]

“The *Frahs* opinion concedes the limits of the term ‘adjudication,’ recognizing the appellant had ‘technically been “adjudicated” in the trial court.’ [Citation.] However, *Frahs* concludes this language is not probative of the Legislature’s intent because ‘[t]he fact that mental health diversion is available only up until the time that a defendant’s case is “adjudicated” is simply how this particular diversion program is ordinarily designed to operate.’ [Citation.] We do not agree with this reasoning. First, ‘[t]he purpose of those programs is precisely to *avoid* the necessity of a trial.’ [Citation.] Second, the canons of statutory interpretation require scrutiny of the relevant text, ‘giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided.’ [Citation.]

“The other key definitional phrase is ‘the postponement of prosecution.’ [Citation.] . . . [P]rosecution is synonymous with ‘criminal

action,’ and it means ‘ “[t]he proceeding by which a party charged with a public offense is accused and brought to trial and punishment.” ’ [Citations.] A prosecution ‘commences when the indictment or information is filed in the superior court and normally continues until . . . the accused is “brought to trial and punishment” or is acquitted.’ [Citation.] Accordingly, . . . trial is ‘the penultimate step in a criminal action,’ and the final step is ‘punishment.’ [Citation.] Based on these principles, we conclude the prosecution phase ends with the rendition of judgment and sentencing.

“Pursuant to the Legislature’s own terminology, pretrial diversion is literally and functionally impossible once a defendant has been tried, found guilty, and sentenced. Upon reaching this point of ‘adjudication,’ the ‘prosecution’ is over and there is nothing left to postpone. . . . [¶] . . . [¶]

“. . . Pursuant to the foregoing analysis, we hold section 1001.36 does not apply retroactively to defendants whose cases have progressed beyond trial, adjudication of guilt, and sentencing. . . .” (*Craine, supra*, 35 Cal.App.5th at pp. 755-756, 760, rev.gr.)

In view of *Craine*,<sup>3</sup> we reject defendant’s claim.<sup>4</sup>

### **DISPOSITION**

The judgment is affirmed.

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<sup>3</sup> Our Supreme Court granted review of *Craine, supra*, 35 Cal.App.5th 744 on September 11, 2019, S256671. Under California Rules of Court, rule 8.1115, which was recently amended, we may rely on *Craine* as persuasive authority while review is pending. (Cal. Rules of Court, rule 8.1115(e)(1), eff. July 1, 2016.)

<sup>4</sup> Given our conclusion, we need not address the Attorney General’s alternative contention focusing on defendant’s failure to obtain a certificate of probable cause.